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The Delta Vision Foundation was established by former members of the Delta Vision Blue Ribbon Task Force, the independent body convened under Governor's Executive Order S-17-06.

The mission of the Delta Vision Foundation is to encourage implementation and progress by the State of California toward achieving the Two Co-Equal Goals as defined in the *Delta Vision Strategic Plan*:

Restore the Delta Ecosystem

Ensure Water Supply Reliability

The Delta Vision Foundation monitors, evaluates, and provides information to government officials, policymakers, and the public about implementing the *Delta Vision Strategic Plan* recommendations as a set of integrated and linked actions.

Delta Vision Foundation

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March 27, 2013

Secretary John Laird
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, California 95814

Re: *"BDCP Plus" is Needed to Accomplish Two Co-Equal Goals*

Dear Secretary Laird:

Congratulations on beginning the release of the Administrative Draft Bay-Delta Conservation Plan (BDCP). The Administrative Draft is a significant accomplishment for the Natural Resources Agency and its departments and it provides a comprehensive scientific basis for development of an overall Delta solution. The Delta Vision Foundation (DVF) preliminary review of the initial chapters finds that it is advancing important elements of a plan to address the challenges in the Delta. However, it falls short of the linked-actions approach set forth in the *Delta Vision Strategic Plan* and is insufficient to achieve the Two Co-Equal Goals: it does not include essential facilities to capture water when it is truly surplus to the environment to provide water supply reliability while leaving enough water for fish at critical times to restore the Delta ecosystem. A workable solution, referred to by DVF as "BDCP Plus" and described in the *2012 Delta Vision Report Card*, can be accomplished by establishing legal commitments and assurances for the other vital elements of the "Delta fix" without delaying implementation of BDCP. The Administration must move expeditiously to embrace a "BDCP Plus" strategy or risk increasing dissipation of stakeholder consensus for BCDP.

It is worth noting that several environmental and business organizations proposed in January a "Portfolio-Based Conceptual Alternative" to BDCP that includes conveyance, storage, water use efficiency, alternate regional water supplies, improved regional water systems integration, habitat restoration, independent science, and most importantly, an operational strategy for Delta exports and ecosystem restoration. These additional components are generally acknowledged as critical to achieving the Two Co-Equal Goals. Although the Portfolio Alternative lacks critical near-term actions for a Strategic Levee System and Improved Through-Delta Conveyance and proposes an isolated conveyance facility that is likely too small to optimize beneficial uses, its significant group of proponents have underscored the wisdom of linked actions and have signaled serious problems for a BDCP-only solution.

The Delta Vision Foundation urges the Governor's Administration, the Legislature, and stakeholders to develop legal commitments that will assure implementation of the linked integrated actions for a workable Delta solution. The Natural Resources Agency and the Delta Stewardship Council should collaboratively lead this effort, beginning immediately.

The Delta Vision Foundation is concerned that the Governor's Administration continues to focus solely on conveyance and habitat restoration in BDCP without sufficient attention on the linked and integrated actions outlined in the *Delta Vision Strategic Plan* that are supported by the scientific evidence to 'fix' the Delta: fish need more water at the right time of the right temperature than conveyance alone will provide; and, unless both fish and farms are going to continue to suffer shortages in most years, then additional facilities are needed to capture water when it is truly surplus to the environment. For the Administration and some stakeholders to consider isolated conveyance as the equivalent to the "Delta fix" is to betray the scientific facts that fish need more water in most years. While BDCP was not initiated or developed as the comprehensive solution for water resource management, it has been held out as the "Delta fix" and, thus, its limited scope ignores both science and politics. BDCP cannot enjoy the broad support necessary for implementation without clear, concise linkages and commitments to the other actions and facilities that comprise a comprehensive Delta solution. That is, BDCP must be linked to facilities and investments to implement the big gulp-little sip strategy (storage, alternate supplies, and water use efficiency) and to protect and enhance Through-Delta Conveyance. Attachment A includes a summary of the critical linked components.

The Portfolio Alternative proposes the core concept of linked actions to identify efficient, effective means for accomplishing the Two Co-Equal Goals while protecting and enhancing the Delta as an evolving place. However, the conveyance facilities in the Portfolio Alternative are likely too small to effectively accomplish three important objectives: (1) minimize fish degradation; (2) divert more water in wet years and less in dry years; and (3) provide long-term security against seismic and flood catastrophes. It is interesting to note that the CALFED Bay-Delta Advisory Committee recommended a 5,000 cubic feet per second isolated conveyance facility combined with Improved Through-Delta Conveyance and storage north and south of the Delta.

Taken together, BDCP and the Portfolio Alternative present an opportunity to craft actions and commitments necessary to ensure immediate and long-term progress. Implementing conveyance improvements and substantial habitat restoration as part of BDCP is critically important and should move forward promptly. However, BDCP cannot and should not proceed without legal requirements and commitments to assure implementation of the other elements of "BDCP Plus" as a workable solution. The opportunity is now.

The Delta Vision Foundation recommends that the Natural Resources Agency and Delta Stewardship Council immediately begin discussions with stakeholders to develop specific policy, legal, and financial linkages through agreements, mitigation requirements, bond covenants, permit requirements, contract terms, and other mechanisms. Further, the two agencies should describe, and quantify where possible, the economic, cost, water supply reliability, ecosystem, and risk reduction benefits of the integrated, linked actions. The Governor and Legislature should validate this approach and direct the necessary resources to assure progress this year.

These actions will reinforce the critical concept of linked, integrated actions to address Delta conflicts and achieve the Two Co-Equal Goals. The "BDCP Plus" concept can be the framework for a broadly supported Delta solution. Stakeholders are finding common ground on the major elements of a true "Delta fix." It is important to capitalize on this opportunity.

The Delta Vision Foundation stands ready to assist the Natural Resources Agency, Delta Stewardship Council, and others in developing these linkages to assure a workable, durable solution. We look forward to working with you on these issues as BDCP advances and the Delta Plan is adopted. Please contact Charles Gardiner if you have any questions or additional needs.

Sincerely,

Sunne Wright McPeak
President, Delta Vision Foundation
Former Secretary, California Business, Transportation, and Housing Agency

Linda Adams
Former Secretary, California Environmental Protection Agency

Mike Chrisman
Former Secretary, California Natural Resources Agency

Richard M. Frank
Former Chief Deputy Attorney General for Legal Affairs, California Department of Justice

Thomas McKernan
CEO, Automobile Club of Southern California

A.G. Kawamura
Former Secretary, California Department of Food and Agriculture

William K. Reilly
Former Administrator, U.S. Environmental Protection Agency

Raymond Seed
Professor of Civil and Environmental Engineering, University of California, Berkeley

Michael Madigan
Former Chairman of the California Water Commission and the Bay-Delta Advisory Council

Charles L. Gardiner
Executive Director

Cc: Phil Isenberg, Chair, and Councilmembers, Delta Stewardship Council
Secretary Ken Salazar, Department of the Interior
Secretary Rebecca Blank (Acting), Department of Commerce
Commissioner Michael Connor, Bureau of Reclamation

Attachment A

The following are the core elements of a workable Delta solution as outlined in the *Delta Vision Strategic Plan* and embodied in "BDCP Plus:"

Delta Operations. The Bay-Delta system must be operated to achieve the Two Co-Equal Goals by diverting more water in wet years and less in dry years (the big gulp-little sip strategy outlined in the Portfolio Alternative). Water is the most important part of fish habitat. However, current operations divert more water in dry years than in wet years. Water use for families, farms, and factories should rely on water that is surplus to the ecosystem needs in wet years. Delta operations must link diversion constraints in dry years with diversion opportunities in wet years.

Conveyance and Storage. The Delta system must be rebuilt with facilities that support and enable the big gulp-little sip strategy and optimize facilities investments. Surface and groundwater storage upstream and downstream of the Delta must be expanded. Conveyance capacity through and around the Delta must be sufficient to move water in wet years, yet have constraints in dry years. Linked storage and conveyance will outperform independent strategies in achieving the Two Co-Equal Goals cost-effectively.

Through-Delta Conveyance. Enhancing through-Delta conveyance to support the big gulp-little sip strategy can provide fish protection and water quality improvement while optimizing the size and cost-effectiveness of new north Delta diversion and conveyance facilities. This concept is absent from both BDCP and the Portfolio Alternative, as well as near-term Delta planning.

Strategic Levee System. Critical levee investments are needed to increase the security of through-Delta conveyance, protect the Delta as place and other critical infrastructure, and provide aquatic habitat in channels that are not primary conveyance corridors. The State lacks any effective strategy for achieving these objectives and integrating actions with BDCP.

Habitat Restoration. The BDCP outlines a comprehensive set of habitat restoration actions. The successful implementation of these actions will depend in large part on adaptive management, independent science reviews, and effective performance monitoring. The success will also depend on minimizing conflicts with existing land uses and mitigating economic impacts in the Delta.

Delta Channel Hydrology. The BDCP includes water operations and several physical changes to improve Delta habitat water quality and fish migration through the Delta. Absent from BDCP and other State planning are barriers, gates, and island restoration that could improve water quality (particularly salinity management) for Delta uses and for fish while reducing the need for reservoir releases.

Water Use Efficiency and Alternate Water Supplies. Regional self-sufficiency and alternate water supplies are almost universally acknowledged as critical for meeting future water demands. These actions are also critical for supporting the big gulp-little sip strategy. The State lacks an adequate strategy for ensuring that <u>all</u> Delta water users make sufficient investments.

Robert Pyke, Consulting Engineer

April 2, 2013

Charles L. Gardiner
Delta Vision Foundation

Re: Your Letter to John Laird dated March 27, 2013

Dear Charles,

I understand the custom of starting a letter or review politely and then ripping the person to pieces, or damning someone with faint praise, but I do not understand the second sentence in your letter, which reads "*The Administrative Draft is a significant accomplishment for the Natural Resources Agency and its departments and it provides a comprehensive scientific basis for development of an overall Delta solution*." I believe that even the faint praise is supposed to be accurate. Neither of the two statements in this sentence is accurate.

It is not even an Administrative Draft, it is an incomplete preliminary Administrative Draft, with many qualifications and holes in it. It is in fact an indication of the disarray that the BDCP is in. No-one with any experience in directing an engineering and ecosystem restoration program of this magnitude would release such an incomplete draft or hold public meetings that are little more than a dog-and-pony show followed by a display of Jerry Meral's expertise in not answering questions. Notwithstanding its limitations, the Steering Committee under the previous administration served a somewhat more useful purpose in that knowledgeable people actually sat around a table and talked to each other.

I suspect that you were just echoing the BDCP propaganda when you said that this release of BDCP documents provides a comprehensive scientific basis for the development of an overall Delta solution but that assertion is laughable. The so-called science that the BDCP relies on is a hodge-podge of computer runs and add-on models that has been roundly criticized by panels formed by both the National Research Council and the Delta Science Program. The current release of documents may be better written than previous releases but the fundamental problems remain.

There are things in the remainder of your letter that I agree with but, in my judgment, the good points that you make are weakened by several questionable assumptions or assertions. My basis of reference for judging the merit of various proposals for solving the current problems of the Delta and California's water conveyance and storage system is that any meaningful proposal has to comply with two basic principles:

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(1) That natural flows through the Delta should be restored to the maximum practical extent, in terms of quantity, quality and the pattern of flow; and

(2) That much more water should be extracted at periods of high flow and much less, or zero, water should be extracted at periods of low flows.

I know that there are other things that need to be done as part of a complete solution, including improving and maintaining Delta channels and levees and encouraging further conservation and recycling, but these are things that should happen anyway, regardless of the solution to the conveyance and storage and ecosystem restoration problems. I have been writing and speaking about the need to comply with these two principles in order to solve the conveyance and storage and ecosystem restoration problems, rather than just tinkering with them, for over two years and have yet to find a single person who disagrees with them.

You score highly on the second of these two principles, or, you would score highly if it was more apparent how you would actually implement your "big gulp, little sip" strategy. I know you do say "*additional facilities are needed to capture water when it is truly surplus to the environment*", but you provide no details. My purpose in writing is to promote the importance of the two principles, rather than to promote the particulars of my own solution known as the Western Delta Intakes Concept, but you might have at least added "as for instance is done in the Western Delta Intakes Concept."

However, I am afraid that you come up short on the first of these two principles. I understand that you are being consistent with the support for "dual conveyance" that was one of the conclusions of the Delta Vision effort, but the fact is that dual conveyance does not deal with the fact that the current flow pattern in the Delta is all screwed-up. Reduced flows across through the Delta to the existing South Delta pumps may be a step in the right direction (although absent any other actions South Delta water quality will be further degraded), but any cross-flows through the Delta still divert water and salmon out of their natural courses down the Sacramento and the Mokelumne Rivers and suck millions of fish to an uncertain future in the "fish salvage" facilities in the South Delta. That juvenile hatchery salmon have to be trucked through the Delta and salvaged fish trucked back to the Sacramento River is absurd. And, making Sacramento River water disappear into North Delta intakes, however effectively they may be screened, is hardly consistent with restoring more natural flows through the Delta.

The members of your board who served on the Delta Vision Blue Ribbon Task Force may have a better understanding than I do of how Delta Vision came to recommend "dual

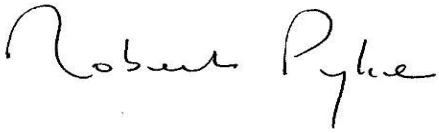
conveyance", but I suspect that it was largely a matter of that if one had to choose between the existing situation and a completely isolated conveyance, one might indeed compromise on dual conveyance. And, it is true that having intakes in both the North Delta and the South Delta appears to offer some flexibility in the timing of extractions in order to minimize damage to listed fish species. In reality, however, because of the bypass flow requirements that are being imposed on operation of the North Delta intakes by the federal fish agencies, little is gained in terms of more reliable water supply, notwithstanding the enormous cost of constructing the North Delta intakes and the twin tunnels and the desecration of the presently bucolic stretch of the Sacramento River bordered by orchards and vineyards where the intakes and the forebay would be located.

Your apparent support for barriers and gates to improve water quality "*while reducing the need for reservoir releases*" is also questionable. I believe that concepts such as the Three-Mile Slough Salinity Control Barrier do have some merit but this is just tinkering with the problem, not addressing it head on – or in other words, treating the symptoms but not the underlying disease. And, the marginal improvement in water quality would come at a significant cost to fishermen and recreational boaters.

Nonetheless, I do support your call for "clear, concise linkages and commitments to the other actions and facilities that comprise a comprehensive Delta solution." That is spot on. I am not sure that the Natural Resources Agency or the Delta Stewardship Council are capable of showing the necessary leadership to make anything happen in this regard, but to the extent that your board can help nudge the Governor away from his tunnel vision and total reliance on Jerry Meral and stir the Legislature to action, that would be a very good thing indeed.

The bottom line is that the people who say that there is not enough water to go around are only half right. There is not enough water to go around in dry years, but on average there would be enough water to go around if we were smarter about both conservation and recycling and addressing the conveyance and storage issues. There is no need for one group of farmers to be pitted against another, or for farmers to be fighting fishermen, and I applaud the Delta Vision Foundation's leadership in calling for a more comprehensive and inclusive approach to dealing with these issues.

Sincerely,



Robert Pyke Ph.D., G.E.

Robert Pyke, Consulting Engineer

April 10, 2013

Mr. Phillip Isenberg
Chair, Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

Dear Phil,

I am forwarding along with this letter a copy of a letter that I have written in response to the Delta Vision Foundation letter to Secretary Laird dated March 27, 2013, that may be of particular interest to you because of your past service as the Chair of the Delta Vision Blue Ribbon Task Force. The DVF letter is generally critical of the Bay Delta Conservation Plan's efforts to date and urges the Natural Resources Agency and the Delta Stewardship Council to immediately begin discussions with regard to various linkages that the DVF believes are missing from the current BDCP efforts. I expressed some skepticism about the ability of the Natural Resources Agency and the Council to do this in my response to the DVF letter although I would be delighted to be proven wrong on that. Moreover, I am not sure that whatever the DVF has in mind is supposed to be one of the functions of the Council.

However, I do want to pick up on another point that was made in the DVF letter and expand on my remarks to the Council at the February Council meeting[1] on an issue that does clearly fall within the Council's purview, which is ruling on whether or not the BDCP meets the statutory criteria for its inclusion in the Delta Plan. The particular point made about the BDCP in the DVF letter is "*it does not include essential facilities to capture water when it is truly surplus to the environment to provide water supply reliability while leaving enough water for fish at critical times to restore the Delta ecosystem.*" This point appears to be consistent with the language of the final draft of the Delta Plan, which says "*Water exported from the Delta will more closely match water supplies available to be exported, based on water year type and consistent with the coequal goal of protecting, restoring, and enhancing the Delta ecosystem.* ☐ *This will be done by improving conveyance in the Delta and expanding groundwater and surface storage both north and south of the Delta to optimize diversions in wet years when more water is available and conflicts with the ecosystem less likely, and limit diversions in dry years when conflicts with the ecosystem are more likely. Delta water*

[1] http://www.youtube.com/watch?v=Ff0-fJ0W8P4

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that is stored in wet years will be available for water users during dry years, when the limited amount of available water must remain in the Delta, making water deliveries more predictable and reliable." I understand that the proponents of the BDCP say, in various degrees, that they acknowledge that additional storage is needed but that they have adopted the strategy of first working on conveyance and then working on storage. However, apart from getting themselves in trouble for piecemealing under CEQA, they continue to ignore the fact that the current BDCP preferred project for conveyance does not allow the extraction of greater amounts of water in wet years to make up for taking less or no water in dry years. The BDCP modeling does take a lot of water in wetter years because the CALSIM II model meets artificially high water demands without realizing there is no storage south-of-the-Delta to store that water, and demands will actually be low because the farmers' fields and urban landscapes are already soaked. Dr Greg Gartrell of the Contra Costa Water District has been quoted[2] as saying: "Unless they (the water contractors backing the BDCP) have storage, they are in big trouble. If you don't do something about having a place to put the water in wet years, you're fooling yourself with these studies." Gartrell refers to these high export figures in wet years as "computer water." "It looks good on paper, but when it comes to real life, you can't get it." Thus, although the DVF letter does not indicate any details of what their "essential facilities" to capture water when it is truly surplus to environmental requirements might be, in principle they are right on point.

This brings me back to my remarks to the Council in which I raised the question of whether you are going to spell out in advance the criteria that should be used to judge whether a reasonable range of conveyance alternatives has been studied, or whether you are simply going to wait until the BDCP folks think they are done and then give them a failing grade. Although you have more generally skirted the requirement of the Delta Reform Act that the Delta Plan "include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan", I think that you need to be more specific in this case and spell out what the minimum requirements are for conveyance alternatives to be consistent with the Delta Plan. The Council in fact made a good start on this in the letter to DWR signed by Joe Grindstaff dated April 18, 2012 and the accompanying comments on the previous administrative draft of the BDCP EIR. These comments included the following:

Currently, the draft EIR/EIS does not provide a convenient means to compare alternatives for their abilities to, among other things: 1) achieve ecosystem restoration objectives; or 2) achieve water supply reliability objectives. We

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[2] The California Spigot, March 14, 2013 http://californiaspigot.blogspot.com/

suggest presenting a summary evaluation of alternatives to facilitate comparison of each alternative relative to the goals and objectives of the project and the ESA and NCCPA. The EIR/EIS would also benefit from a summary which justifies selection of the preferred project showing: 1) the screening evaluation of all alternatives including pros and cons; 2) the ability of each proposed alternative to meet the requirements of the Delta Reform Act (Act); and 3) the ability of the preferred project to satisfy ESA and the NCCPA requirements. Under NEPA, the general rule is that all alternatives must be analyzed and presented to similar levels of detail; this is different from CEOA, which requires only enough information about alternatives to allow for meaningful comparison. When preparing a joint document, however, the alternatives analysis must also meet the NEPA standard. We anticipate that the analysis presented in the final draft EIR/EIS will address these points so that it meets the requirements of both laws.

And:

The BDCP EIR/EIS needs to demonstrate that its screening process has included a wide range of conveyance alternatives, including alternative intake locations, and that the appropriate criteria were used to select alternatives for more detailed evaluation. Although there are variations in operational flows, it is difficult to determine if the BDCP EIR/EIS met this requirement because with the exception for the No Action alternative, and Alternative 9, the draft documents currently describe a single capacity for all conveyance alternatives, one location for intakes and conveyance tunnels, and two routes for canals. We expect that this is because the results of earlier and more comprehensive screening analyses have not yet been posted.

However, it is not at all clear that earlier and more comprehensive screening analyses were ever conducted and, given the foot-dragging by the BDCP and the DWR on a proper evaluation of alternatives, I belief that the Council now needs to go further in setting acceptable parameters for the comparison of alternatives. What is the minimum water supply reliability that needs to be obtained to be consistent with the longer-term goals of the Delta Plan? What are the minimum targets for ecosystem restoration to be consistent with the goals of Delta Plan? As a recent BDCP blog by Nancy Vogel has pointed out, the BDCP is not intended to solve all the problems of the Delta, and might not even be intended to meet all the Council's long-term goals for water supply reliability and ecosystem restoration, but it should be expected to make a significant contribution in both of these areas at the same time as protecting and enhancing the Delta as a Place. Although Section 85320 (b) (2) (B) of the Delta Reform Act, which requires that a reasonable range of Delta conveyance alternatives be studied as a condition of including the BDCP in the Delta Plan, is listed in the context of complying

with CEQA, the wording of Section 85320 (b) (2) is additional to the standard requirements of CEQA and the study of alternatives should not be restricted to the minimum study that satisfies CEQA under previous court rulings. Common-sense suggests that a serious study of alternatives should have been undertaken before six years of effort were expended on what has turned out to be a preferred project of twin tunnels from the North Delta and that if such a study has not been carried out, it should now be carried out in the context of the Delta Reform Act and the nascent Delta Plan.

This raises the question of who is available to advise the Council on this particular issue as well as review of the next administrative draft EIR /EIS, the release of which is now promised by May 6th. The Independent Science Board is required by law to review the EIR/ EIS and submit its comments to both the Council and the now Department of Fish and Wildlife, but that review will presumably focus more on the scientific aspects of ecosystem restoration rather than on the details of compliance with the standard requirements for an EIR /EIS or of conveyance alternatives and water supply reliability. Likewise, an excellent panel has been seated by the Delta Science Program to review the BDCP effects analysis. I believe that that review is at the request of the BDCP itself so that it might be seen as part of the BDCP effort, although I do not believe that anyone questions the competence or independence of the panel members. But again, their focus will be on the effects analysis, not conveyance alternatives and water supply reliability. Thus, you and your staff would appear to heavily rely on the advice of your "independent sub-consultant" ARCADIS US for advice on conveyance alternatives and water supply reliability, but there are at least two problems with that.

One problem is that most of the key staff who were identified in the proposal by ARCADIS US and the team selected by the Council sub-committee of Patrick Johnston and Randy Fiorini (with input from Cliff Dahm) have either been barred from participating at the direction of former Council staff, removed at the request of former Council staff or have elected not to participate because of restrictions placed on the scope of work by Council staff. It is possible that these team members have been replaced with personnel of equal or greater knowledge and experience with respect to Delta and EIR /EIS issues but I think that is unlikely.

A second problem is that ARCADIS US are known to have formed a team with HNTB to pursue the design of the intake structures for the BDCP preferred conveyance alternative. That would appear to be a conflict-of-interest just as bad or worse as the conflict that CH2MHill, your prime consultant had when they were first selected, which as you will recall led to your being taken to the woodshed by then Assemblymember Huffman and Senator Wolk, and the determination that a more independent sub-consultant should be selected. One might normally suggest that, as a minimum,

ARCADIS US needs to choose between continuing to serve you as the independent sub-consultant and pursuing work on the BDCP preferred project, but in this case the former option is likely already foreclosed.

You may have other options for obtaining future advice on the BDCP, but one that you might wish to consider is that the bulk of the team led by ARCADIS US that was originally selected by Patrick and Randy for this work could in fact be re-constituted in a different framework that is actually independent of any conflict with the BDCP.

As usual, I would be happy to meet with you, and/or other Council members and/or staff to discuss anything that is in this letter. I should also congratulate you on approaching convergence on the Delta Plan. I am still disappointed that it is more of an additional regulatory framework than an actual plan but I have come to understand that that reflects the difference in thinking of an engineer who is used to drawing up plans and specifications and an attorney / legislator who drafts rules and regulations! But the document, whatever it is, has evolved in a positive direction and I commend you and the other council members for your persistence.

Sincerely,

Bob

Robert Pyke Ph.D., G.E.